

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DARNELL MCGARY,

Plaintiff,

v.

TIM BROWN, *et al*,

Defendants.

Case No. C06-5108RJB

REPORT AND  
RECOMMENDATION DENYING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION

Noted for May 5, 2006

This matter has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This matter comes before the court on plaintiff's motion for temporary and permanent injunctive relief pending current suit (Dkt. #1, attachment) and motion to amend TRO permanent injunctive relief (Dkt. #3). Having reviewed plaintiff's motions and the remaining record, the undersigned submits the following Report and Recommendation for the Honorable Robert J. Bryan's review.

DISCUSSION

The basic function of preliminary injunctive relief is to preserve the *status quo ante litem* pending a determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National Football League, 634 F.2d 1197, 1200 (9th Cir. 1980). A party seeking injunctive relief must fulfill either of two standards, the "traditional" or the "alternative":

1 Under the traditional standard, a court may issue injunctive relief if it finds that (1)  
2 the moving party will suffer irreparable injury if the relief is denied; (2) the moving  
3 party will probably prevail on the merits; (3) the balance of potential harm favors the  
4 moving party; and (4) the public interest favors granting relief. . . . Under the  
alternative standard, the moving party may meet its burden by demonstrating either  
(1) a combination of probable success and the possibility of irreparable injury or (2)  
that serious questions are raised and the balance of hardships tips sharply in its favor.

5 Cassim v. Bowen, 824 F.2d 791, 795 (9th Cir. 1987) (citations omitted). To obtain injunctive relief, the  
6 moving party must demonstrate exposure to irreparable harm absent the requested judicial intervention.  
7 Caribbean Marine Services Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

8 Plaintiff has made no showing that either the traditional or alternative standards have been met  
9 here. In particular, plaintiff has not shown a likelihood of success on the merits of his claims. See Order to  
10 Show Cause regarding plaintiff's Complaint, dated the same date herewith. In addition, even if it can be  
11 said plaintiff was entitled to it, it is premature at this stage of the proceedings to order permanent injunctive  
12 relief in this matter.

13 Finally, "[i]t is elementary that one is not bound by a judgment in personam resulting from litigation  
14 in which he is not designated as a party or to which he has not been made a party by service of process."  
15 Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969). In other words, "a court has no  
16 power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the  
17 defendant." Id. Here, plaintiff requests that the court enjoin the State of Washington Department of Social  
18 and Health Services' Special Commitment Center ("SCC") from taking certain actions with respect to its  
19 residents. The SCC, however, is not a party to this action. As such, the court has no power to grant the  
20 injunctive relief requested.

21 Plaintiff does request in his motion to amend that the Court order defendant Sziebert "from  
22 anyfurther [sic] diagnosing and using segregation to force compliance with medication when Plaintiff  
23 function [sic] better off it, and denying [sic] him a job and recreation." Plaintiff's Motion to Amend TRO  
24 Permanent Injunctive Relief on Merits, p. 2. As discussed above, however, plaintiff has failed to meet  
25 either the traditional or alternative standard for obtaining injunctive relief.

#### 26 CONCLUSION

27 For all of the aforementioned reasons, the court should deny plaintiff's motion for temporary and  
28 permanent injunctive relief pending current suit (Dkt. #1, attachment) and motion to amend TRO

1 permanent injunctive relief on merits (Dkt. #3).

2 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
3 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
4 objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
5 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
6 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **May 5, 2006**,  
7 as noted in the caption.

8 The clerk is directed to send a copy of this Order to plaintiff and to counsel for defendants.

9 DATED this 13th day of April, 2006.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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